SUPREME COURT OF THE UNITED STATES.

No. ~~216~~. 134.

ALEX'R DUNCAN, WATTS SHERMAN, WM. BUTLER DUNCAN, CHARLES H. DABNEY AND DAVID DUNCAN, COMPOSING THE FIRM OF DUNCAN, SHERMAN & CO., PLAINTIFFS IN ERROR,

vs.

JAMES M. SMITH, RECEIVER OF OLIVER LEE & COMPANY'S BANK AT BUFFALO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

GEO. S. GIDEON, printer, 511 Ninth street, Washington, D. C.

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Gideon, print.

In the Court of Appeals of the State of New York.

To the Honorable Benjamin F. Greene, one of the justices of the Supreme Court of the State of New York:

The petition of Henry B. Gibson, of Canandaigua, in the county of Ontario and State of New York, respectfully shows that your petitioner is a stockholder of Oliver Lee and Company's Bank at Buffalo, which is a body corporate and politic, organized, existing, and doing business as such at the city of Buffalo, in the county of Erie and State of New York, under and by virtue of an act of the people of the State of New York, represented in senate and assembly, entitled "An act to authorize the business of banking," passed on the eighteenth day of April, in the year one thousand eight hundred and thirty-eight and of the acts supplementary thereto and amendatory thereof; that the said corporation was organized as aforesaid during the month of January, in the year one thousand eight hundred and forty-four, and has ever since been engaged in the business of banking, at the city of Buffalo aforesaid, until and including the third day of September, in the year one thousand eight hundred and fifty-seven, when it suspended its business, and has not resumed the same since.

That the capital stock of the said corporation is one hundred and seventy thousand dollars, one hundred and thousand dollars of which have been paid in.

That your petitioner is the owner and holder, in his own right, of twenty thousand dollars of the capital stock of the said corporation, and has paid the same in, in full.

That the said corporation has, ever since its organization, issued bank notes, intended to be circulated as money, and the same have been so circulated.

That on the fourth day of September, in the year one thousand eight hundred and fifty-seven, the said corporation became, and was unable to meet its liabilities, and by reason to continue its business, and did on that day suspend its business, and has not since resumed the same, nor paid its said notes, or the checks of its customers or depositors, nor its drafts, as he is informed and verily believes, and that its chief shareholders have determined that it is impracticable for the said corporation to attempt to resume its said business.

That your petitioner has examined statements furnished by the officers of the said corporation, showing the amount of its indebtedness, and the character, extent, and condition of its assets; that such indebtedness is very large, and its assets to a very great extent are unavailable, a considerable portion thereof being past due and in suit.

That your petitioner, from such examination, believes that the said corporation is insolvent, and if not insolvent, he verily believes it is in imminent danger of insolvency.

Wherefore your petitioner prays for an order declaring the said corporation insolvent or in imminent danger of insolvency, and that a receiver with the usual powers may be appointed to wind up the affairs of the said corporation, or for such other, or further, or different order, or relief in the premises, as your honor may see fit to grant.

Dated Buffalo, September 12th, 1857.

HENRY B. GIBSON.

JOHN GANSON, *Attorney for Petitioner.*

STATE OF NEW YORK,
Ontario County, ss.

Henry B. Gibson being duly sworn, deposes and says that the matter stated in the foregoing petition are true in substance and matter of fact.

HENRY B. GIBSON.

Subscribed and sworn to before me, this 12th day of September, A. D. 1857, at the village of Canandaigua, in said county.

C. YOUNGLOVE,
Justice of the Peace of said County.

STATE OF NEW YORK,
County of Ontario, ss.

I, John J. Lyon, clerk of the county court in and for the county and state above mentioned, do hereby certify that Cornelius Younglove, whose genuine signature appears above, is, and was at the time of signing the same, a justice of the peace in and for the county and State aforesaid, duly commissioned and sworn; that all his official acts as such are entitled to full faith and credit; and that the aforesaid county court is a court of record, having general jurisdiction.

Given under my hand and seal of office, at Canandaigua, this 12th day of Sept., 1857.

JOHN J. LYON, *Clerk.*

At the chambers of Benjamin F. Greene, September 12, 1857, in the city of Buffalo and State of New York:

IN THE MATTER OF THE APPLICATION of HENRY B. GIBSON, for an order declaring Oliver Lee and Company's Bank at Buffalo insolvent, or in imminent danger of insolvency.

On reading and filing the petition of Henry B. Gibson, bearing

date on the twelfth day of September, in the year one thousand eight hundred and fifty-seven, duly verified, praying for an order declaring Oliver Lee and Company's Bank at Buffalo insolvent or in imminent danger of insolvency, and it appearing that the said Oliver Lee and Company's Bank at Buffalo is a body corporate and politic, created, existing, and doing business as such, under and by virtue of an act of the people of the State of New York, represented in senate and assembly, passed on the eighteenth day of April, in the year one thousand eight hundred and thirty-eight, and of the acts passed supplementary thereto and amendatory thereof, and that it was so organized in the month of January, one thousand eight hundred and forty-four, and has been doing business under the acts aforesaid ever since at the city of Buffalo, in the State of New York, and that it has issued its notes to circulate, and has circulated the same as money, and done a general banking business since the month of January last aforesaid, to the fourth day of September, one thousand eight hundred and fifty-seven, when it suspended its said business from inability to longer continue the same; and it further appearing that the said corporation is now insolvent, or at least in imminent danger of insolvency: Now, therefore, on motion of John Ganson, of counsel for the said petitioner, it is hereby ordered that the 14th day of September instant, at nine o'clock in the forenoon of that day, be the time, and the old court-house in the city of Buffalo be the place, and the same are hereby appointed as the time and place for the hearing of the parties before me, as to whether the said Oliver Lee and Company's Bank at Buffalo is solvent, or otherwise, or in imminent danger of insolvency. It is hereby further ordered, that on the day and at the place so appointed for such hearing as aforesaid, the officers of the said corporation exhibit before me all of the books, papers, and accounts, assets and effects of said corporation, and that they then and there appear, that they may be examined under oath, touching the said application. It is hereby further ordered that a copy of this order be served upon the president or cashier of the said Oliver Lee and Company's Bank at Buffalo, by delivering it to either the said president or cashier this day, as notice of the hearing aforesaid, and that no other notice of such hearing need be given.

B. F. GREENE.

STATE OF NEW YORK,
Erie County, ss.

John Ganson, being duly sworn, deposes and says, that he served the within order, on the twelfth day of September, one thousand eight hundred and fifty-seven, upon Henry L. Lansing, as president of Oliver Lee and Company's Bank at Buffalo, by exhibiting to him the same, and by delivering to him at the same

time and leaving with him personally a copy of said order. That the said Henry L. Lansing is personally known to this deponent; that he is and was at the time of such service such president, and such service was made in the city of Buffalo, State of New York.

JOHN GANSON.

Subscribed and sworn to before me, at the city of Buffalo, on this 14th day of September, A. D. 1857.

B. F. GREENE.

IN THE MATTER OF THE APPLICATION of HENRY B. GIBSON, for an order declaring Oliver Lee & Co.'s Bank, at Buffalo, insolvent, &c. } At Chambers 12, 1857.

Ordered, That the said bank be, and hereby is, declared insolvent; that James M. Smith, of Buffalo, be appointed receiver of said bank, upon giving a bond in a penalty of $250,000, with three or more sureties, who will justify in the above amount in the aggregate.

B. F. GREENE.

IN THE MATTER OF THE APPLICATION of HENRY B. GIBSON, for an order declaring Oliver Lee & Company's Bank insolvent, or in imminent danger of insolvency, &c.

An application having been made to me the twelfth day of September, one thousand eight hundred and fifty-seven, by the above named Henry B. Gibson, for an order declaring the Oliver Lee and Company's Bank at Buffalo insolvent, or in imminent danger of insolvency, which application was founded upon the petition of the said Henry B. Gibson, duly verified by the affidavit of him, in and by which petition it was set forth and appeared that the said Oliver Lee and Company's Bank at Buffalo was at the time of making said application a banking corporation, organized, and doing business as such at the city of Buffalo, in the county of Erie and State of New York, under and by virtue of an act of the people of the State of New York, represented in senate and assembly, entitled "An act to authorize the business of banking," passed April eighteenth, in the year one thousand eight hundred and thirty-eight, and of the acts supplementary thereto and amendatory thereof, and that said corporation was organized as aforesaid during the month of January, in the year one thousand eight hundred and forty-four, and had ever since been engaged in the business of banking, at the city of Buffalo aforesaid, until the third

day of September, one thousand eight hundred and fifty-seven, when it suspended its business, and had not resumed the same since that period. That the capital stock of said corporation paid in at the time of making said application was one hundred and sixty thousand dollars, and that the entire capital of said corporation was at the time aforesaid one hundred and seventy thousand dollars, and that the said petitioner was the owner and holder in his own right of twenty thousand dollars of capital stock in said corporation, and has paid the same in, in full. That said corporation had ever since its organization issued bank notes, intended to be circulated as money, and the same had been circulated as money. That on the fourth day of September, in the year one thousand eight hundred and fifty-seven, the said corporation became and was unable to meet its liabilities, and by reason thereof to continue its business, and had not since that day resumed the same, nor paid its said notes or the checks of its customers or depositors, nor its drafts; and that the chief shareholders of said corporation, upon an examination of the affairs thereof, had determined that it was impracticable for the said corporation to attempt to resume its said business. That the indebtedness of said corporation, as appeared from an examination of statements furnished by the officers thereof, showing the amount of its indebtedness, and the character, extent, and condition of its assets, was very large, and its assets to a very great extent were unavailable, a considerable portion thereof being past due and in suit. That the said corporation, if not insolvent, was then in imminent danger of insolvency. And whereas, upon the application so as aforesaid made, I made an order appointing the old court-house in the city of Buffalo, and nine o'clock a. m. of the fourteenth day of September, A. D. 1857, time and place for the hearing of the said parties before me, as to whether the said Oliver Lee and Company's Bank at Buffalo is solvent, or otherwise, or in imminent danger of insolvency; and that on the day, and at the place so appointed for such hearing as aforesaid, the officers of the said corporation exhibit before me all of the books, papers, and accounts, assets and effects of the said corporation, and that they then and there appear, that they be examined under oath touching said application, and directing that a copy of said order be served upon the president or cashier of the said Oliver Lee and Company's Bank at Buffalo, by delivering it to either the said president or cashier, on said twelfth day of September aforesaid, as notice of the hearing aforesaid, and that no other notice of said hearing need be given. And the said parties having appeared before me, in pursuance of said order, at the time and place therein mentioned, to wit, at the old court-house in the city of Buffalo, at nine o'clock a. m. of said fourteenth day of September, the said petitioner appearing by John Ganson, his counsel, and the Oliver Lee and Company's Bank at Buffalo appearing by Henry L. Lan-

sing, president; and due proof having been made to me by affidavit of the personal service of a copy of said order on the said president, on the said twelfth day of September, 1857, by delivering the same to and leaving it with the said president personally at the city of Buffalo, and at the same time exhibiting to said president the original order so as aforesaid made, and having thereupon proceeded to said hearing, said parties then and there consenting thereto, and having heard the proofs and allegations of the said parties, and examined the president of the said corporation on oath in relation to its financial condition, and it appearing therefrom that the said Oliver Lee and Company's Bank at Buffalo is, and during the time aforesaid has been, such corporation as aforesaid; that the capital of said corporation paid in is one hundred and sixty thousand dollars, of which the said petitioner was the owner and holder of twenty thousand dollars; that said corporation did its business at the city of Buffalo aforesaid, and that it had during all the time in said petition set forth issued bank notes, circulating and intended to circulate as money; and that the said corporation was insolvent at the time of making said application to the entire amount of its capital and surplus, and about one hundred thousand dollars more. And whereas an order was made by me on said application, on the fourteenth day of September of 1857, declaring said Oliver Lee and Company's Bank at Buffalo insolvent, and that James Murdock Smith, of Buffalo, be appointed receiver thereof, upon giving a bond in a penalty of two hundred and fifty thousand dollars, with three or more sureties, who should justify in that amount in the aggregate; and whereas an application has been made to me on behalf of the above named petitioner for a modification of said last mentioned order in reference to the amount of the security which the said James M. Smith was thereby required to give; and it appearing to me that the said Smith has not hitherto entered upon the duties of such receivership:

Now, therefore, it is ordered, that the said James M. Smith be and he hereby is appointed receiver of the property of the said Oliver Lee and Company's Bank at Buffalo, upon his executing within ten days from the date hereof, a bond, with two or more sureties, to be approved by a justice of the supreme court, to the people of the State of New York, in the penalty of fifty thousand dollars, conditioned for the faithful performance of his duties as such receiver, and for the due accounting for all moneys received by him as such. And I further order that the said bond, and the petition and order hereinbefore mentioned, be filed in the office of the clerk of the county of Erie.

Dated Buffalo, February 25, 1858.

B. F. GREENE.

In pursuance of the foregoing order, James M. Smith, the receiver therein named, duly executed and filed with the clerk of

the county of Erie, a bond as therein directed, duly approved by the Hon. B. F. Greene, and thereupon entered upon the discharge of his duties as such receiver.

That afterwards, and on the 26th day of March, 1859, the said receiver made a report in compliance with the provisions of the statute in such case made and provided.

Supreme Court.

IN THE MATTER OF THE APPLICATION of HENRY B. GIBSON, for an order appointing a Receiver of Oliver Lee and Company's Bank at Buffalo.	At Chambers, March 26th, 1859.

Whereas on the twelfth day of September, 1857, an application was made to the undersigned, a justice of the supreme court of the State of New York, residing in the eighth judicial district, by Henry B. Gibson, he then being a stockholder, and owning stock to the amount of more than one-tenth part of the capital paid in, in Oliver Lee and Company's Bank at Buffalo, a banking corporation organized and doing business as such at the city of Buffalo, in the county of Erie and State of New York, under and by virtue of an act of the people of the State of New York, represented in senate and assembly, entitled "An act to authorize the business of banking," passed April 18th, in the year 1838, and of the acts supplementary thereto, and amendatory thereof, and had from and after the first day of January, 1850, until the third day of September, 1857, issued bank notes circulating and intended to circulate as money, for an order declaring the said corporation insolvent, or in imminent danger of insolvency; and whereas such proceeding were thereupon had, that thereafter, and on the 14th day of September, 1857, I did duly determine that the said corporation was at the time of making such application and then was insolvent, *an* did then and there make an order declaring such determination, and did appoint James M. Smith, of Buffalo, receiver of such bank, upon his giving bond in a penalty of two hundred and fifty thousand dollars, with three or more sureties, who should justify in the said amount in the aggregate; and whereas, afterwards, and on the twenty-fifth day of February, in the year 1858, I did, upon application made to me, modify the said order by appointing the said James M. Smith such receiver as aforesaid, upon his executing a bond, with two or more sufficient sureties, to be approved by a justice of the supreme court, to the people of the State of New York, in the penalty of fifty thousand dollars, conditioned for the faithful performance of his duties as such receiver, and for the due accounting for all moneys received by him as such receiver, and whereby I did further order that the said bond be

filed in the office of the clerk of the county of Erie; and whereas the said James M. Smith, thereafter, and on the third day of March, 1858, in accordance with the terms of said order, did execute a bond to the people of the State of New York, which was duly filed in office of the clerk of Erie county:

And whereas I did afterwards, and on the thirtieth day of June, upon the application of the said receiver, make an order that the said receiver have until the 30th day of September, 1858, in which to declare a dividend of the cash in his hands among the creditors of the said bank, and to do the other things required by him to be done; and whereas I did afterwards, and on the first day of October, duly make an order, upon the application of the said receiver, that he have until the first day of January, 1859, to declare a dividend, and to do the other things required by law to be done as aforesaid, and did also make a further order on the thirty-first day of December, 1858, granting a similar extension of time for making said dividend, and performing such other acts, until the first day of March, 1859; and whereas, on the first day of March last, aforesaid, the said receiver did make such dividend among the creditors of said corporation:

And whereas the said receiver has this day rendered to me in writing a particular account of the debts and liabilities of said corporation contracted after the first day of January, 1850, remaining unsatisfied, and a preliminary account of all proceedings under oath, in which the said receiver has set forth the amount of cash realized by him, the expenses and allowances claimed by him, the said receiver, all payments made by him, the amount on hand which remains to be divided, and the dividend so as aforesaid declared by him; and he having also at the same time reported and submitted to me a true and accurate list, and statement of the persons who, since the first day of January, 1850, have been stockholders of said corporation, the nominal amount of stock held by each, and the residence of each stockholder, so far as the same can be ascertained, which said list and statement is made up from the stock books, ledger, and list of stockholders kept by said corporation, and which said list and statement also show when each stockholder acquired and transferred the stock standing in his name, as by the said account list and statement will more fully appear:

Now, on motion of John Ganson, attorney for the said receiver, I hereby order, in pursuance of the statute in such case made and provided, that the said report and list of stockholders be referred to the Honorable Nathan K. Hall, of the said city of Buffalo, who is hereby appointed a referee for such purpose, who shall, after giving notice to all persons concerned, apportion the debts and liabilities of said corporation which have been contracted after the first day of January, 1850, and remain unsatisfied, among the said stockholders ratably in proportion to their stock, according

to the principles declared in an act of the legislature of the State of New York, entitled "An act to enforce the responsibility of stockholders in certain banking corporations and associations, as prescribed by the constitution, and to provide for the prompt payments of demands against such corporations and associations," passed April fifth, in the year 1849, and that the said referee report his proceedings to me, or to some other justice of the supreme court residing in the said eighth judicial district, according to law, and that the said report be filed, and this order entered in the office of the clerk of the county of Erie.

B. F. GREENE.

Supreme Court.

IN THE MATTER OF THE APPLICATION of HENRY B. GIBSON for an order appointing a Receiver of Oliver Lee and Company's Bank, at Buffalo.	Referee's Report.

To the Justices of the Supreme Court of the State of New York, and to each of them:

In pursuance of an order made by the Honorable Benjamin F. Greene, one of the justices of the said supreme court, residing in the eighth judicial district, bearing date the 26th day of March, 1859, by which the report of James M. Smith, esq., the receiver of Oliver Lee & Company's Bank, at Buffalo, and a list of the stockholders therein made and reported to said justice by said receiver, were referred to the undersigned as referee, with directions, after giving notice to all persons concerned, to apportion the debts and liabilities of such corporation contracted after the first day of January, 1850, and remaining unsatisfied, among the stockholders in the said corporation ratably in proportion to the amount of stock held by them, according to the principles declared in the act of the legislature of the State of New York, entitled "An act to enforce the liability of stockholders in certain banking corporations and associations, as prescribed by the constitution, and to provide for the prompt payment of demands against such corporations and associations," passed April 5, 1849, and by which said order the undersigned, as such referee, was further directed to report his proceedings to the said justice of the supreme court, orto some other justice of the supreme court residing in the eighth judicial district, according to law, I, Nathan K. Hall, the referee named in the said order, do respectfully report:

That the said order of reference was delivered to me for execution on the 28th day of March, 1859, and that I did thereupon designate and appoint the 26th day of April, 1859, at 10 o'clock in the forenoon, and at my office in the city of Buffalo and county

of Erie, as the time and place of hearing the matters so referred; and that, pursuant to the directions in said order contained, I caused due notice of my appointment as such referee, and that I would proceed to a hearing of the matters so referred, on the said 26th day of April then next, at ten o'clock in the forenoon of that day, at my office in the city of Buffalo, and also that I would then and there proceed to hear the allegations and proofs of all persons and parties interested in the matters referred, and would ascertain the persons who were chargeable as stockholders for the debts and liabilities contracted by said bank, and the amount chargeable to each, according to the rules and principles declared in the act hereinbefore referred to, to be given to Erastus Corning, Israel T. Hatch, Henry B. Gibson, Watts Sherman, Alexander Duncan, William Butler Duncan, Charles H. Dobney, David Duncan, Henry L. Lansing, E. Selden Thayer, Erastus Corning, jr., and Frances H. Low, (who appeared by such report and list to be stockholders as aforesaid,) and to all other persons in any wise concerned, by causing a notice thereof to be published in the Albany Atlas and Argus, the Albany Evening Journal, the Buffalo Commercial Advertiser and the Buffalo Courier, (the newspapers designated in an order made for that purpose by the Honorable Richard P. Marvin, one of the justices of the supreme court of the State of New York, residing in the eighth judicial district,) for the period and in the manner in the said order and the said statute directed, affidavits of which publication of the said notice are hereto annexed, and to which I respectfully refer. And I further certify and report that I also caused said notice to be served on such of the said stockholders as appeared by the said list so reported by the said referee to be residents of the county of Erie, in the manner particularly mentioned in the affidavits and testimony of John Ganson and James Tucker, hereto annexed, and which show personal and other proper service of such notice, and to such affidavits and testimony I respectfully refer as part of this my report.

And I further certify and report that in pursuance of the said order of reference, and of the said notice, I did, at the time and place so mentioned in the said notice, proceed in the said reference and upon the matters so referred, and that thereafter, by adjournment from day to day and from time to time, I proceeded upon the said matter so referred until the 31st day of May, 1859, when the proofs upon the said reference were declared to be closed, and I proceeded to prepare my apportionment and report.

And I further certify and report that at the several times when proceedings have been so, as aforesaid, had before me under the said order of reference, I have heard the allegations and proofs offered and made by the parties interested in the said matters so referred, and have proceeded to take proofs in regard to the debts and liabilities of the said bank, and as to ascertain who are charge-

able as stockholders for the debts and liabilities of the said bank, contracted as aforesaid, and remaining unsatisfied, and the amount chargeable to each according to the rules and principles declared in the said act of the legislature of the State of New York, hereinbefore referred to.

And I do further certify and report that it was satisfactorily proved before me, that the debts and liabilities of the said bank were correctly stated and set forth in the schedule annexed to the said receiver's report so referred to me as aforesaid, and amounted to the sum of $502,944 22, besides interest accrued thereon. And also, that the cash and assets in the hands of the receiver, together with an assessment and collection of the sum of $170,000, and interest from the stockholders, would not, under any circumstances, produce a sufficient sum to pay off and discharge the debts and liabilities of the said bank, by reason whereof I determined to apportion to such stockholders, respectively, an amount equal to the amount of stock held by them respectively in the said Oliver Lee and Company's Bank, at Buffalo.

And I do further certify and report that it was also satisfactorily proved before me, upon the said reference, that schedule H, annexed to the said receiver's report so referred to me, as aforesaid, states truly the names of the stockholders of the said Oliver Lee and Company's Bank, at Buffalo, the nominal amount of the stock held by each, and the residence of each, and the dates when each stockholder acquired and transferred such stock as therein stated, with the exception that in respect to one hundred shares of stock standing in the name of said Henry B. Gibson on the books and stock ledger of said bank, and in said schedule, it appeared that at the time of the suspension of the said bank, and for several years prior thereto, the said Henry B. Gibson appeared upon the books and stock ledger of the said bank as a stockholder thereof, holding three hundred shares of its stock, but that one hundred shares of such stock equitably and in fact belonged to the said Henry L. Lansing, at and before the time of the suspension of the said bank; that the said Lansing, at and before the time of such suspension, held the certificate or scrip of said stock, with a power of attorney for the transfer thereof on the books of the bank, and was then entitled to a transfer of said one hundred shares, and that he had previously received the dividends thereon.

And I further certify and report that upon the proofs before me, I have assessed the said Henry B. Gibson and the said Henry L. Lansing, jointly, as being both liable as stockholders on account of the said one hundred shares of stock.

And I further certify and report that after hearing and duly considering the proofs and allegations made before me upon the said reference, I did find and determine, and do accordingly adjudge and report that the default in the payment of any of the debts of

of Erie, as the time and place of hearing the matters so referred; and that, pursuant to the directions in said order contained, I caused due notice of my appointment as such referee, and that I would proceed to a hearing of the matters so referred, on the said 26th day of April then next, at ten o'clock in the forenoon of that day, at my office in the city of Buffalo, and also that I would then and there proceed to hear the allegations and proofs of all persons and parties interested in the matters referred, and would ascertain the persons who were chargeable as stockholders for the debts and liabilities contracted by said bank, and the amount chargeable to each, according to the rules and principles declared in the act hereinbefore referred to, to be given to Erastus Corning, Israel T. Hatch, Henry B. Gibson, Watts Sherman, Alexander Duncan, William Butler Duncan, Charles H. Dobney, David Duncan, Henry L. Lansing, E. Selden Thayer, Erastus Corning, jr., and Frances H. Low, (who appeared by such report and list to be stockholders as aforesaid,) and to all other persons in any wise concerned, by causing a notice thereof to be published in the Albany Atlas and Argus, the Albany Evening Journal, the Buffalo Commercial Advertiser and the Buffalo Courier, (the newspapers designated in an order made for that purpose by the Honorable Richard P. Marvin, one of the justices of the supreme court of the State of New York, residing in the eighth judicial district,) for the period and in the manner in the said order and the said statute directed, affidavits of which publication of the said notice are hereto annexed, and to which I respectfully refer. And I further certify and report that I also caused said notice to be served on such of the said stockholders as appeared by the said list so reported by the said referee to be residents of the county of Erie, in the manner particularly mentioned in the affidavits and testimony of John Ganson and James Tucker, hereto annexed, and which show personal and other proper service of such notice, and to such affidavits and testimony I respectfully refer as part of this my report.

And I further certify and report that in pursuance of the said order of reference, and of the said notice, I did, at the time and place so mentioned in the said notice, proceed in the said reference and upon the matters so referred, and that thereafter, by adjournment from day to day and from time to time, I proceeded upon the said matter so referred until the 31st day of May, 1859, when the proofs upon the said reference were declared to be closed, and I proceeded to prepare my apportionment and report.

And I further certify and report that at the several times when proceedings have been so, as aforesaid, had before me under the said order of reference, I have heard the allegations and proofs offered and made by the parties interested in the said matters so referred, and have proceeded to take proofs in regard to the debts and liabilities of the said bank, and as to ascertain who are charge-

able as stockholders for the debts and liabilities of the said bank, contracted as aforesaid, and remaining unsatisfied, and the amount chargeable to each according to the rules and principles declared in the said act of the legislature of the State of New York, hereinbefore referred to.

And I do further certify and report that it was satisfactorily proved before me, that the debts and liabilities of the said bank were correctly stated and set forth in the schedule annexed to the said receiver's report so referred to me as aforesaid, and amounted to the sum of $502,944 22, besides interest accrued thereon. And also, that the cash and assets in the hands of the receiver, together with an assessment and collection of the sum of $170,000, and interest from the stockholders, would not, under any circumstances, produce a sufficient sum to pay off and discharge the debts and liabilities of the said bank, by reason whereof I determined to apportion to such stockholders, respectively, an amount equal to the amount of stock held by them respectively in the said Oliver Lee and Company's Bank, at Buffalo.

And I do further certify and report that it was also satisfactorily proved before me, upon the said reference, that schedule H, annexed to the said receiver's report so referred to me, as aforesaid, states truly the names of the stockholders of the said Oliver Lee and Company's Bank, at Buffalo, the nominal amount of the stock held by each, and the residence of each, and the dates when each stockholder acquired and transferred such stock as therein stated, with the exception that in respect to one hundred shares of stock standing in the name of said Henry B. Gibson on the books and stock ledger of said bank, and in said schedule, it appeared that at the time of the suspension of the said bank, and for several years prior thereto, the said Henry B. Gibson appeared upon the books and stock ledger of the said bank as a stockholder thereof, holding three hundred shares of its stock, but that one hundred shares of such stock equitably and in fact belonged to the said Henry L. Lansing, at and before the time of the suspension of the said bank; that the said Lansing, at and before the time of such suspension, held the certificate or scrip of said stock, with a power of attorney for the transfer thereof on the books of the bank, and was then entitled to a transfer of said one hundred shares, and that he had previously received the dividends thereon.

And I further certify and report that upon the proofs before me, I have assessed the said Henry B. Gibson and the said Henry L. Lansing, jointly, as being both liable as stockholders on account of the said one hundred shares of stock.

And I further certify and report that after hearing and duly considering the proofs and allegations made before me upon the said reference, I did find and determine, and do accordingly adjudge and report that the default in the payment of any of the debts of

the said bank was first made in or about the first week in September, 1857, and not before that time, and that all the debts and liabilities of the said bank now remaining unsatisfied were contracted after the first day of January, 1854, and at different times after that day.

And I do hereby, in pursuance of the said order of reference so made by the Hon. Benjamin F. Greene, as such justice as aforesaid, and by virtue of the power and authority vested in me as such referee, by the said order and the act of the legislature of the State of New York, hereinbefore referred to, find, decide, adjudge, and report, that the several persons whose names are embraced in the list of "stockholders upon whom the debts and liabilities of Oliver Lee and Company's Bank, at Buffalo, are apportioned," contained in schedule "A A" hereto annexed, and forming part of this, my report, and to which I respectfully refer, are the stockholders of the said Oliver Lee & Company's Bank, at Buffalo, who are responsible individually, equally and ratably, and jointly, or separately and severally as therein stated, for the debts and liabilities of the said bank, reported to be due by the receiver thereof, to the amount set opposite to their respective names in said schedule; that the number and amount of the shares of the said stock of the said Oliver Lee and Company's Bank, at Buffalo, held by them respectively, on which they are respectively responsible as aforesaid, are stated and set forth in said schedule "A A" hereto annexed opposite the names of such persons respectively, and that the stockholders so named in said schedule "A A" are respectively liable and responsible severally or jointly as therein stated, to pay the several sums set forth in the last column of said schedule "A A" opposite to their names respectively, which sums I have apportioned, and do hereby apportion, in pursuance of the said act of the legislature of the State of New York, and of the said order of reference, to and among the said stockholders, as therein stated, as their ratable proportion of the debts and liabilities of the said Oliver Lee and Company's Bank, at Buffalo, contracted after the first day of January, 1850, and remaining unsatisfied. according to the principles declared in the said act of the legislature of the State of New York.

And I do further certify and report, that I have annexed hereto the engrossed minutes of the testimony taken by me on such reference, and of the proceedings thereon, together with the exhibits made and marked in the course of such proceedings and testimony, with the exception of the stock ledger of said bank, (which, after being given in evidence and marked and examined by me, was retained in the custody and under control of the re-

ceiver of said bank,) and I hereby respectfully refer to such minutes and exhibits as forming part of this, my report.

Buffalo, June 6, 1829.

All which is respectfully submitted.

N. K. HALL,
Referee.

Schedule "A A" referred to in the preceding report and forming part thereof.

A list of the stockholders of Oliver Lee and Company's Bank, at Buffalo, who were responsible for the debts and liabilities of the said bank, with the number and amount of the shares of said stock held by them respectively, and on which they are respectively liable, together with the amount of such debts and liabilities for which are respectively liable, as apportioned by N. K. Hall, referee.

Names of the several stockholders upon whom the debts and liabilities of Oliver Lee and Company's Bank, at Buffalo, are apportioned.	Number of shares of stock held by such stockholders respectively.	Amount of stock held by such stockholders respectively, or on which they are liable to be assessed.	Amount apportioned to and against such stockholders respectively.
Erastus Corning	600	$60,000	$60,000
Israel T. Hatch	80	8,000	8,000
Henry B. Gibson	200	20,000	20,000
Henry B. Gibson and Henry L. Lansing, jointly	100	10,000	10,000
Watts Sherman	70	7,000	7,000
Alexander Duncan, Watts Sherman, William Butler Duncan, Charles H. Dabney, and David Duncan, composing the firm of Duncan & Sherman & Co., jointly	500	50,000	50,000
Henry L. Lansing	50	5,000	5,000
E. Selden Thayer	50	5,000	5,000
Erastus Corning, jr	50	5,000	5,000
	1,700	$170,000	$170,000

Buffalo, 6th June, 1859.

N. K. HALL,
Referee.

At a special term of the supreme court, held at the court-house, in the city of Buffalo, in and for the county of Erie, on the twenty-fourth day of June, in the year one thousand eight hundred and fifty-nine. Present, Hon. Noah Davis, jr., justice.

IN THE MATTER OF THE APPLICATION of HENRY B. GIBSON, for an order appointing a Receiver of Oliver Lee and Company's Bank, at Buffalo.

The Honorable Nathan K. Hall, to whom it was referred by an order made by Benjamin F. Greene, one of the justices of the supreme court, residing in the eighth judicial district, bearing date the twenty-sixth day of March, one thousand eight hundred and fifty-nine, to apportion the debts and liabilities of the said Oliver Lee and Company's Bank, at Buffalo, which had been contracted after the first day of January, one thousand eight hundred and fifty, and were then remaining unsatisfied among the stockholders of the said corporation, ratably in proportion to their stock, according to the principles declared in an act of the legislature of the State of New York, entitled "An act to enforce the responsibility of stockholders in certain banking corporations and associations, as prescribed by the constitution, and to provide for the prompt payments of demands against such corporations and associations," passed April fifth, in the year one thousand eight hundred and forty-nine, and that said referee report his proceedings thereon according to law, having made his report bearing date the sixth day of June, one thousand eight hundred and fifty-nine, wherein and whereby it appears, that he has apportioned the debts and liabilities of the said Oliver Lee and Company's Bank, at Buffalo, contracted after the first day of January, one thousand eight hundred and fifty, and remaining unsatisfied, (which debts and liabilities amounted to the sum of five hundred and two thousand nine hundred and forty-four dollars twenty-two cents, exclusive of interest which had accrued thereon,) among the following named persons, and in the amounts set opposite their names respectively, as and for the ratable portion of them and each of them, of the debts and liabilities aforesaid.

Names.	Amounts.
Erastus Corning	$60,000 00
Israel T. Hatch	8,000 00
Henry B. Gibson	20,000 00
Henry B. Gibson and Henry Lansing, jointly	10,000 00
Watts Sherman	7,000 00
Alexander Duncan, Watts Sherman, William Butler Duncan, Charles H. Dabney, and David Duncan,	

(composing the firm of Duncan, Sherman & Co.,) jointly	$50,000 00
Henry L. Lansing	5,000 00
E. Selden Thayer	5,000 00
Erastus Corning, jr	5,000 00

And the said referee having reported that the persons above named are the stockholders of the said corporation, who are responsible individually, equally, and ratably, and jointly or separately and severally, as above stated, to the amounts set opposite their respective names aforesaid, which said amounts are respectively the amount of stock owned by each of the aforesaid stockholders in the said corporation; and the said referee having presented his said report to the present special term of this court, and a motion having been made on behalf of the receiver of the property of the said corporation, that the said report and apportionment be in all things ratified and confirmed:

Now, on hearing Mr. John Ganson, of counsel for said receiver, and Eli Cook for Duncan, Sherman & Co., and others, it is ordered that the said report and apportionment do stand in all things ratified and confirmed; and it is further ordered that the said report and apportionment, together with this order of confirmation of the same, be filed in the office of the clerk of the county of Erie.

NOAH DAVIS, JR.,
Justice Supreme Court.

Supreme Court.

IN THE MATTER OF THE APPLICATION of HENRY B. GIBSON for an order appointing a Receiver of Oliver Lee and Company's Bank, at Buffalo. } Case.

The reference so ordered as aforesaid came on to be heard before the Honorable Nathan K. Hall, referee, at his office in the city of Buffalo, on the twenty-eighth day of March, one thousand eight hundred and fifty-nine, and proceeded from time to time until the same was completed.

The said referee, upon the evidence given before him, upon such hearing, found the following facts:

That Oliver Lee and Company's Bank at Buffalo was an association formed on the twenty-third day of January, one thousand eight hundred and forty-four, under and in pursuance of the act of the legislature of the people of the State of New York, represented in senate and assembly, entitled "An act to authorize the business of banking," passed on the eighteenth day of April, in the year

one thousand eight hundred and thirty-eight, and the acts passed supplementary thereto and amendatory thereof.

That the following is a copy of the original articles of association duly executed and filed, namely:

Articles of association of "Oliver Lee and Company's Bank, at Buffalo," made and entered into under and in pursuance of an act of the legislature of the State of New York, entitled "An act to authorize the business of banking," passed April 18, 1838, and the acts amendatory thereof and in addition thereto.

These presents witness, that the subscribers, whose names are hereto affixed, have associated, and do hereby associate themselves, under and pursuant to the acts aforesaid, to establish an office of discount, deposit, and circulation, and to conduct the business of banking as thereby authorized, and do hereby certify and declare the articles of their association as follows:

First. The name used to distinguish this association, and to be used in its dealings, shall be "Oliver Lee and Company's Bank, at Buffalo."

Second. The operations of discount and deposit of the said association are to be carried on at the city of Buffalo, in said State.

Third. The capital stock of this association shall be one hundred thousand dollars, and be divided into one thousand shares of one hundred dollars each, which may be increased at any time, on the terms hereinafter mentioned, to one million of dollars.

Fourth. The associates hold and own the said capital stock of one hundred thousand dollars, and have contributed thereto in the proportions following:

Oliver Lee, of the city of Buffalo, four hundred shares, amounting, at one hundred dollars each, to.....	$40,000
Erastus Corning, of the city of Albany, three hundred shares, amounting, at one hundred dollars each, to.....	$30,000
Watts Sherman, of the city of Albany, three hundred shares, amounting, at one hundred dollars each, to...	$30,000

Fifth. The association shall commence on the first day of January, one thousand eight hundred and forty-four, and terminate on the first day of January, two thousand eight hundred and forty-four.

Sixth. The said Oliver Lee shall be, and he is hereby, constituted and chosen the president of this association, and shall so continue until another person shall be elected in his place. The president shall be the executive and financial officer of the association, until otherwise directed by the associates.

Seventh. The capital stock of the association may at any time, or from time to time, be increased to an amount not exceeding in the whole one million of dollars, in such manner and on such

terms as the associates may at any time hereafter, or at the time of such increase, prescribe and direct.

Eighth. No transfer of any part of the capital stock of the said association shall be made by any of the associates, unless by the consent in writing of all the other associates.

Ninth. The said associates shall meet from time to time, as often as may be necessary, for the transaction of the business of the association, and the direction and management of its affairs, and regular minutes shall be kept of the proceedings of such meetings; and in all such meetings, and in conducting the business of the said association under these articles, the said Oliver Lee shall be entitled to one vote, and the said Erastus Corning and Watts Sherman jointly to one vote. The associates may attend any meeting to be held as aforesaid by an attorney to be appointed for that purpose, who shall have the right to act and vote for his principal the same as if such principal were personally present.

Tenth. The associates may, at any time hereafter, provide for the election of a board of directors to manage the concerns of the association in such manner and with such authority and power as they may see fit.

Eleventh. The said association shall possess and enjoy all the rights, franchises, privileges, and powers, that any association formed or organized under the acts of the legislature aforesaid may or can possess, enjoy, or exercise, and the said associates, for themselves and their assigns, do hereby become and declare themselves contracting parties with the people of the State of New York, under the said acts of the legislature, and do accept the franchises and privileges therein and thereby offered and provided to and for any association which may be formed under the same.

Twelfth. The said associates shall, from time to time, appoint such officers and agents as they may deem necessary for the management of the business and concerns of the association, who may be removed at the pleasure of the associates.

Thirteenth. Dividends of the profits of the association shall be made from time to time as the associates may deem proper.

Fourteenth. The shareholders of this association shall not be liable in their individual capacity for any contract, debt, or engagement of the association.

Fifteenth. No associate shall, directly or indirectly, procure any loan or discount from the association, or in any way appropriate or use any part of its funds for his individual purposes without the consent of the other associates, and the stock of every associate shall be liable for any debt, demand, or liability the association may hold against him.

Sixteenth. The association may, from time to time, establish such by-laws as may be necessary for the proper management and direction of the affairs and business of the association.

Seventeenth. These articles of association may be changed, from time to time, with the assent in writing of two-thirds in interest of the association, provided that no change shall be made by which the rights, remedies, or security of its then existing creditors shall be weakened or impaired.

In witness whereof, the said parties have hereunto set their hands and seals, this first day of January, in the year one thousand eight hundred and forty-four.

OLIVER LEE, [L. S.]
ERASTUS CORNING, [L. S.]
WATTS SHERMAN. [L. S.]

Certificate.

We, the persons hereinafter named, and who have hereunto set our hands and seals, do hereby certify that we have this day associated to establish an office of discount, deposit and circulation, and to conduct the business of banking under and in pursuance of the act of the legislature of the State of New York, entitled "An act to authorize the business of banking," passed April 18, 1838, and the several acts amendatory thereof and in addition thereto, upon the terms and conditions, and subject to the liabilities prescribed in said act; and for ourselves and our assigns we do hereby become and declare ourselves contracting parties with the people of the State of New York, under the said acts of the legislature, and do accept the franchises and privileges therein and thereby offered and provided to and for any association which may be formed under the same.

And we do further certify, as follows:

1. The name used to distinguish the said association, and to be used in its dealings, is Oliver Lee & Company's Bank, at Buffalo.

2. The operations of discount and deposit of the said association are to be carried on at the city of Buffalo, in said State.

3. The capital stock of the said association is one hundred thousand dollars, divided into one thousand shares of one hundred dollars each.

4. The names and places of residence of the shareholders, and the number of shares held by each of them respectively, are as follows:

Oliver Lee, of the city of Buffalo, four hundred shares.
Erastus Corning, of the city of Albany, three hundred shares.
Watts Sherman, of the city of Albany, three hundred shares.

5. The said association shall commence on the first day of January, in the year one thousand eight hundred and forty-four, and terminate on the first day of January, in the year two thousand eight hundred and forty-four.

We have provided by our articles of association that the capital

stock aforesaid may, at any time, or from time to time, be increased to an amount not exceeding in the whole the sum of one million of dollars, and that the number of associates may also be increased from time to time, on the terms and conditions mentioned in the said articles. The said articles also declare that the shareholders of the association shall not be liable, in their individual capacity, for any contract, debt, or engagement of the association.

In witness whereof we have hereunto set our hands and seals, this first day of January, in the year one thousand eight hundred and forty-four.

[L. S.] OLIVER LEE,
ERASTUS CORNING,
WATTS SHERMAN.

Sealed and delivered in the presence of—
JOHN WILSON.

STATE OF NEW YORK,
City and County of Albany, ss.

On this twenty-third day of January, one thousand eight hundred and forty-four, before me personally appeared the above named Oliver Lee, Erastus Corning and Watts Sherman, to me known to be the persons described in and who executed the foregoing instrument, who acknowledged that they, and each of them, did execute and deliver the same for the uses and purposes therein mentioned. Therefore let it be recorded.

JOHN Q. WILSON,
Judge of Albany County Court, and Counsellor-at-law in the Supreme Court.

That the said association suspended business by reason of insolvency, on the fourth day of September, one thousand eight hundred and fifty-seven; that its debts and liabilities then exceeded the sum of five hundred thousand dollars, and that the cash and assets of the association in the hands of the receiver, together with an assessment and collection of the sum of one hundred and seventy thousand dollars and interest from the stockholders, would not, under any circumstances, produce a sufficient sum to pay off and discharge the debts and liabilities of the association.

That its capital stock was one hundred and seventy thousand dollars at the time of its suspension, and was then owned as follows, as appears by the stock ledger, namely:

Erastus Corning, of Albany	$60,000 00
Israel T. Hatch, of Buffalo	8,000 00
Henry B. Gibson, of Canandaigua	30,000 00
Watts Sherman, of New York	7,000 00
Duncan, Sherman & Co., of New York	50,000 00

Henry L. Lansing, of Buffalo	5,000 00
E. Selden Thayer, of Buffalo	5,000 00
Erastus Corning, jr., of Albany	5,000 00
	$170,000 00

That the shares of the stock are one hundred dollars each.

That the stock ledger, as above set forth, states truly the names of the stockholders of the said association, the nominal amount of the stock held by each, and the residence of each, with the exception of one hundred shares of stock, standing thereon, in the name of Henry B. Gibson. This one hundred shares, equitably and in fact, belonged to Henry L. Lansing, at and before the time the association suspended, but had never been transferred to him on the stock ledger, or transfer book.

That the first default in the payment of any of the debts of the said association, was, in the first week of September, one thousand eight hundred and fifty-seven, and not before that time, and that all of the debts remaining unsatisfied were contracted after the first of January, one thousand eight hundred and forty-four, and at different times after that day that it issued circulating notes until its suspension.

The counsel for Watts Sherman, and for Duncan, Sherman & Co. insisted in their behalf, respectively, that they were not liable personally, as stockholders or otherwise, for the debts and liabilities of the corporation, or any portion thereof, and that the same should not be apportioned or charged upon them respectively, either ratably or otherwise, and they submitted the following objections thereto:

I. That by the 14th clause of the articles of association, the contract under which they respectively became stockholders, it was expressly provided that "the shareholders of this association shall not be liable in their individual capacity for any contract, debt, or engagement of the association;" and that such contract was authorized and confirmed by the State as one of the contracting parties, by the general banking law of 1838, which provided, among other things, that "No shareholder of any such association shall be liable in his individual capacity for any contract, debt, or engagement of such association, unless the articles of association by him signed shall have declared that the shareholder shall be so liable;" and by which it was further provided, that every person becoming a shareholder by transfer, "shall, in proportion to his shares, succeed to all the rights," if prior shareholders. (Laws of 1838, chap. 260, §§ 23, 19.)

II. That the rights of the shareholders, thus secured by a contract authorized by law, are protected by the Federal Constitution

from encroachment by subsequent State laws, whether in the form of constitutional provisions or legislative enactments; and the rights and obligations of these parties are, therefore, in this respect, unchanged by the personal-liability clauses contained in the constitution of 1846, and in chapter 226 of the laws of 1849.

III. That the power to change, by subsequent legislation, the terms and obligations of antecedent contracts, is not reserved by the 32d section of the general banking act; and the reservation therein of power at any time to alter or repeal the law has full scope and effect, without construing it as authorizing the legislature to impair or annul contracts, lawfully made between the stockholders, prior to such alteration or repeal.

IV. That a reservation by the State, in express terms, of power to impair, by subsequent laws, the obligation of contracts between individual citizens, lawful at the time they were made, would be in conflict with the Federal Constitution, and no consent on the part of the corporation could make it effectual; and that, in regard to these stockholders, the attempt is to impose liability by expunging a clause lawfully inserted in the articles of association—a personal contract of the stockholders, as between themselves, distinct from the public certificate required by the act.

V. That the antecedent rights and obligations of the shareholders are not impaired or affected by the seventh section of the eighth article in the constitution of 1846, as the power to alter or repeal the act of 1838 was reserved to the legislature, and not to the people of the State, or a convention of their representatives.

VI. That the act of 1849, to enforce the responsibility of stockholders, was intended merely to regulate the mode of enforcing the liability against those on whom it was imposed by the constitution, and that it was not designed, and does not operate to subject to personal responsibility any except those made liable by the constitution.

VII. That even if the legislature had power to change the rights of the contracting parties, and to subject the shareholders to burdens from which they were exempted by their articles of association, still the act of 1849 does not accomplish that purpose, being itself in conflict with the State constitution in the following, among other particulars:

1. It provides that the liability of the stockholders shall be enforced only in the mode it prescribes; thus restricting the shareholders and the creditors alike to its anomalous and summary process of ascertaining and determining their respective rights.

2. The process to which the parties are thus limited is special and peculiar, and the rights of the stockholders, as well as of the corporation and its creditors, are to be decided and divested under its provisions, without the right of trial by jury, and without due process of law.

3. It prevents even the corporation from contesting the claim of the creditor who institutes the process, unless by permission of a judge out of court, to be obtained on affidavit, showing what the defence is; and the judge may withhold the right of defending, unless he is satisfied the defence is a good one.

4. The claims of creditors are to be ascertained extra judicially by the receiver, and the shareholders not only have no opportunity to contest them, but they are not, even by constructive notice, made parties to the proceedings, until the receiver has exhausted the assets by declaring dividends on such uncontested claims.

5. The stockholders have no opportunity of contesting their status as such, or the apportionment of the debts and liabilities in any suit between them and the creditors, and are deprived of the right of trial by jury in respect to any question on which their liability depends.

6. The act discriminates between different creditors, withholding from creditors, whose claims are less than one hundred dollars, the means of enforcing their constitutional rights, which are extended to other creditors.

7. It prevents creditors from enforcing their claims against shareholders to the full amount of their stock respectively, and makes them liable only equally and ratably.

8. It prevents any creditor from proceeding against the stockholders, or either of them, until he first exhausts his remedy against the bank, thus making the liability contingent and conditional.

9. The remedy tendered is not by action of any kind, and the proceeding is special and exceptional throughout, burdening the creditor with the expense, delay, and complication incident to a litigation with the bank, and all its debtors, its other creditors, and its stockholders, and involving their litigations among themselves respectively, with his own against them all.

The referee overruled each of the objections so taken as aforesaid separately.

The said counsel specifically excepted to each decision of the referee on each of the said objections so as aforesaid separately made.

The referee thereupon decided, as matter of law, that the shareholders, in whose behalf the objections aforesaid were taken, were respectively liable to apportionment to the extent of their ratable proportion of the liabilities of the said association, and embraced them in such apportionment accordingly.

To which several rulings and decisions respectively their counsel excepted separately and specifically.

The hearing upon the referee's report, in the above entitled matter, and the exceptions thereto afterwards, and on the twenty-fourth day of June, one thousand eight hundred and fifty-nine, at a special term of this court, came on to be heard before the honorable

Noah Davis, jr., one of the justices of this court, and upon such hearing the counsel for the said Watts Sherman, and for the said firm of Messrs. Duncan, Sherman and Company, again insisted in their behalf, as he insisted before the referee on the reference aforesaid, and raised and presented, separately and specifically, each of the objections and propositions which had been previously taken before the referee, and hereinbefore stated, and each of the same was separately overruled by the said justice; and to the decision on each of the same separately, and the final conclusion and decision of the court on the report, the said counsel specifically excepted.

CAGGER & HILL,
Attorneys for Watts Sherman and Duncan, Sherman & Co.

Supreme Court.

IN THE MATTER OF THE APPLICATION of HENRY B. GIBSON, for an order appointing a Receiver of Oliver Lee and Company's Bank, at Buffalo.

SIR: Take notice that Watts Sherman and Alexander Duncan, Watts Sherman, William Butler Duncan, Charles H. Dabney, and David Duncan, composing the firm of Duncan, Sherman & Co., hereby appeal to the general term of this court, from the order confirming the report and apportionment made by the referee in this proceeding, and from the judgment entered thereon in the office of the clerk of Erie county, on the 29th day of June, 1859.

Dated July 26th, 1859.

Yours, &c.,
CAGGER & HILL,
Attorneys for defendants, Watts Sherman and Alexander Duncan; Watts Sherman, William Butler Duncan, Charles H. Dabney, and David Duncan, comprising the firm of Duncan, Sherman & Co.

To JOHN GANSON, Esq., *Attorney, &c.*, and
OBADIAH J. GREEN, *Clerk of County of Erie.*

At a general term of the supreme court held at the court-house in the village of Lockport, in the county of Niagara, in and for the eighth judicial district, on the sixteenth day of September, one thousand eight hundred and fifty-nine.

Present, Hon. Benjamin F. Greene, P. justice; Noah Davis, jr., Richard P. Marvin, justices.

IN THE MATTER OF THE APPLICATION of HENRY B. GIBSON, for an order appointing a Receiver of Oliver Lee and Company's Bank, at Buffalo.

The appeal to the general term of this court from the order of the special term confirming the report of the referee, and his apportionment of the debts and liabilities of the Oliver Lee and Company's Bank at Buffalo, among the stockholders thereof, taken on the part of Watts Sherman and Alexander Duncan, Watts Sherman, William Butler Duncan, Charles H. Dabney and David Duncan, having been brought on for argument at the present term of this court, after hearing Mr. John K. Porter for the said appellants, and Mr. John Ganson for the receiver—

It is ordered, that the said report and apportionment of the referee in this matter, and the judgments entered in pursuance thereof, be in all things ratified and confirmed with the costs of this appeal, and that this order be entered and filed in Erie county clerk's office, and the judgment of affirmance be there entered, with the costs of appeal to be adjusted.

At a general term of the supreme court held at the court-house, in the village of Lockport, Niagara county, in and for the eighth judicial district, on the seventeenth day of September, one thousand eight hundred and fifty-nine: present, Hon. B. F. Green, presiding judge; Noah Davis, jr., Richard P. Marvin, justices.

IN THE MATTER OF THE APPLICATION of HENRY B. GIBSON, for an order appointing a Receiver of Oliver Lee and Company's Bank at Buffalo.

The appeal taken to the general term of this court on the part of Watts Sherman and Alexander Duncan, Watts Sherman, William Butler Duncan, Charles H. Dabney and David Duncan, from the order of the special term, confirming the report of the referee and his apportionment of the debts and liabilities of Oliver Lee and Company's Bank at Buffalo, among the stockholders thereof, having been argued at the present term of this court, by Mr. John K. Porter for said appellants, and by Mr. John Ganson for the receiver, and the court having, after deliberation thereupon, ordered that said report and apportionment, and the judgment entered in pursuance thereof, be in all things ratified and confirmed with costs, and said costs having been adjusted at the sum of forty-seven dollars and seventy-two cents:

Now, on motion of John Ganson, attorney for the receiver of said bank, it is ordered, that the judgment and order of the special term, confirming the report of the referee in this matter and his

apportionment of the debts and liabilities of said corporation and the judgment entered and docketed in pursuance of the said order, be and the same hereby is in all things ratified and confirmed; and it is further ordered, that the receiver of said corporation recover of the said appellants the said sum of forty-seven dollars and seventy-two cents, the costs of this appeal so adjusted as aforesaid, and that he have execution therefor.

Judgment signed September 20th, 1859.

O. J. GREEN, *Clerk.*

STATE OF NEW YORK,
Erie County Clerk's Office, ss.

I, Obadiah J. Green, clerk of the county of Erie and of the courts of record thereof, do hereby certify that I have compared the foregoing copy of the report of the receiver of the property of Oliver Lee and Company's Bank at Buffalo; the order referring the same to the referee; the report of the said referee; the order of the special term confirming the report and apportionment of said referee; and the case made and filed by Watts Sherman, and by Duncan, Sherman & Co; the notice of appeal to the general term therefrom; and the judgment of the general term affirming the same, with an original report of the receiver's order of reference; report of referee; order of special term; notice of appeal and judgment of general term respectively, and notice of appeal to the court of appeals now remaining on file in the clerk's office of Erie county; and that the foregoing are true copies of said originals and of the whole and every part thereof.

In witness whereof I have hereunto set my hand and affixed seal this eighth day of December, one thousand eight hundred and fifty-nine. [L. S.]

O. J. GREEN, *Clerk.*

Supreme Court, Erie county.

IN THE MATTER OF THE APPLICATION of HENRY B. GIBSON, for an order appointing a Receiver of Oliver Lee and Company's Bank at Buffalo.

SIR: Take notice that Watts Sherman and Alexander Duncan, Watts Sherman, William Butler Duncan, Charles H. Dabney, and David Duncan, composing the firm of Duncan, Sherman & Co., hereby appeal to the court of appeals, from an order made at a general term of this court, in the village of Lockport, in the county of Niagara, on the 16th day of September, 1859, ratifying and confirming the report and apportionment of the referee in this matter and the judgment entered thereon, and also from the judgment

of affirmance entered in this matter in pursuance of said order, in the office of the clerk of Erie county.

Albany, Oct. 26, 1859.

Yours, &c.,
CAGGER & HILL,
Attorneys for Watts Sherman and Alexander Duncan, Watts Sherman, William Butler Duncan, Charles H. Dabney, and David Duncan, composing the firm of Duncan, Sherman & Co.

To JOHN GANSON, Esq., *Attorney, &c.*, and
OBADIAH J. GREENE, *Clerk of Erie county.*

STATE OF NEW YORK, *ss.*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the thirteenth day of April, in the year of [L. S.] our Lord one thousand eight hundred and sixty, before the judges of said court.

Witness—
GEORGE F. COMSTOCK, Esquire,
Chief Judge.
CHARLES HUGHES,
Clerk.

IN THE MATTER OF THE APPLICATION of HENRY B. GIBSON, for an order appointing a Receiver of Oliver Lee & Company's Bank at Buffalo.

Be it remembered, that on the ninth day of December, in the year of our Lord one thousand eight hundred and fifty-nine, Watts Sherman and Alexander Duncan, and others, the appellants in this action, came here into the court of appeals by Cagger & Hill, their attorneys and counsel, and filed in the said court their notice of appeal and return thereto, from a judgment and order of the supreme court. And James M. Smith, receiver of said bank, and the respondent in said action, afterwards appeared in said court of appeals, by John Ganson, his attorney and counsel, which said notice of appeal and return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, after having heard this action argued by Mr. John K. Porter, counsel for the appellants, and by Mr. John Ganson, counsel for the respondent, and after due deliberation having been had thereon, did order and adjudge that the judgment and order of the supreme court appealed from in this action be in all things affirmed.

And it was further ordered and adjudged that the respondent recover against the appellants costs of appeal in this court, and

also interest on the amount of the judgment of the supreme court by way of damages for the delay and vexation caused by the bringing of the appeal in this action.

It was also ordered that the record and proceedings be remitted to the Supreme Court, there to be proceeded upon according to law.

Therefore it is considered that the said judgment and order be in all things affirmed, with costs as aforesaid, and stand in full force, strength and effect. And hereupon, as well the notice of appeal and return thereto aforesaid, as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court, before the justices thereof, &c.

CHARLES HUGHES, *Clerk.*

COURT OF APPEALS, CLERK'S OFFICE,
Albany, April 26, 1860.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached.

DAVID WILSON, *Dp. Clerk.*

Supreme Court.

IN THE MATTER OF THE APPLICATION of HENRY B. GIBSON, for an order appointing a Receiver of Oliver Lee & Company's Bank at Buffalo.

The appeal to the court of appeals on the part of Watts Sherman, Alexander Duncan, Watts Sherman, William Butler Duncan, Charles H. Dabney, and David Duncan, composing the firm of Duncan, Sherman & Company, from the judgment of the general term of this court confirming the apportionment of the referee in this proceeding, having been argued, and the said court of appeals having, after due deliberation, ordered that the said order and judgment appealed from be in all things affirmed, with costs, and interest on the amount of the judgment by way of damages; and the proceedings in the court of appeals having been remitted to this court to be proceeded on according to law:

Now, on motion of John Ganson, attorney for the respondent, James M. Smith, as receiver of the property of Oliver Lee & Company's Bank at Buffalo aforesaid, it is ordered that the judgment of the court of appeals be made the judgment of this court, and that the said order affirming the apportionment of the referee and the judgment of the general term be, and the same are in all things, hereby

ratified and confirmed, and that the respondent recover interest on the said judgment, and also that he recover of the appellant, Watts Sherman, the sum of seventy-six dollars and thirty-two cents of costs; and that the said respondent also recover of Alexander Duncan, Watts Sherman, William Butler Duncan, Charles H. Dabney, and David Duncan (composing the firm of Duncan, Sherman & Company), the sum of ninety-six dollars and fifty-two cents of costs, and that execution issue therefor.

Judgment signed May 14th, 1860.

O. J. GREEN, *Clerk.*

Writ of Error.

[L. S.] UNITED STATES OF AMERICA, *ss.*

The President of the United States of America,

To the Justices of the Supreme Court of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said supreme court of the State of New York, before you, in the matter of the application of Henry B. Gibson for an order appointing a receiver of Oliver Lee and Company's Bank at Buffalo, and Alexander Duncan, Watts Sherman, William Butler Duncan, Charles H. Dabney, and David Duncan, composing the firm of Duncan, Sherman & Company, and others, manifest error hath happened, to the great damage of the said Alexander Duncan, Watts Sherman, William Butler Duncan, Charles H. Dabney, and Daved Duncan, as by their complaint we are informed: we, being willing that such error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 3d day of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 1st Monday of March, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States the eighty-fourth.

A. A. BOYCE, *Clerk.*

JOHN K. PORTER,
Att'y for Pl'ffs in Error.

July 16th, 1860.—Allowed.

S. NELSON.

Filed July 20, 1860, 12½ p. m.

Citation.

IN THE MATTER OF THE APPLICATION of HENRY B. GIBSON, for an order appointing a Receiver of Oliver Lee and Company's Bank at Buffalo.

UNITED STATES OF AMERICA, *ss.*

To James M. Smith, Receiver of Oliver Lee and Company's Bank at Buffalo:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 3d day of December next, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of New York, to wit, in Erie county clerk's office, in said State, wherein Alexander Duncan, Watts Sherman, William Butler Duncan, Charles H. Dabney, and David Duncan, composing the firm of Duncan, Sherman & Company, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Sam'l Nelson, one of the Justices of the Supreme Court of the United States, this 16th day of July, 1860.

S. NELSON,
One of the Justices of the Supreme Court of the United States.

JOHN K. PORTER,
Att'y for Pl'ff in Error.

Filed July 20, 1860, 12½ p. m.

IN THE MATTER OF THE APPLICATION of HENRY B. GIBSON, for an order appointing a Receiver of Oliver Lee and Company's Bank at Buffalo.

UNITED STATES OF AMERICA, *ss.*

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York, to wit, in Erie county clerk's office, in said State, wherein Alexander Duncan, Watts Sherman, William Butler Duncan, Charles H. Dabney, and David Duncan, composing the firm of Duncan, Sherman & Company, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Nelson, one of the justices of the Supreme Court of the United States, this 16th day of July, 1860.

S. NELSON,
One of the Justices of the Supreme Court of the United States.

JOHN K. PORTER, *Att'y for Pl'ff in Error.*

Personal service of an original citation, of which the within is a copy, is admitted this 20th day of July, 1860.

JOHN GANSON, *Att'y for Def't in Error.*

SUPREME COURT OF THE STATE OF NEW YORK,
Erie County, Clerk's Office, ss.

To the Hon. the Supreme Court of the United States of America:

In obedience to a writ of error and citation to me directed, and which is hereto attached, I, Obadiah J. Green, clerk of the supreme court of the State of New York, in and for the county of Erie, do hereby certify that the preceding is a correct transcript of the records and proceedings in said action, and now remaining of record and on file in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of Buffalo, this twen-
[L. S.] ty-eighth day of July, in the year of our Lord one thousand eight hundred and sixty.

JOS. L. FAIRCHILD,
Sp. D'p Clerk.

Filed 28th October, 1860.